Commission Analysis and Conclusion

**Adopted: Measure No. ~~9~~10 - Average Speed of Answer—Customer Calling Centers.
Benchmark - 60 seconds.**

We adopt Staff's proposal to include in the Plan a measure for Average Speed of Answer—Customer Calling Centers. We see no compelling need to adopt separate standards for consumer and business calling centers, as GCI advocates. Our conclusion is consistent with the manner in which answer time is reported under our Part 730 rules, which do not require separate reporting for consumer and business centers.

We further establish a benchmark of 60 seconds average answer time, as proposed by Ameritech Illinois and Staff which is consistent with our Part 730 rules. As noted above, such a benchmark is appropriate in the absence of sufficient data establishing a historical performance level to exceed the Part 730 standard.

~~**10. Proposed: Percent of Calls Answered (New) Benchmark**~~

~~The GCI/City propose to include three separate measures of calls answered (or, calls abandoned), for both residence and business Customer Calling Centers and for Repair Centers. Staff initially proposed two abandoned call measures, one for Customer Care Centers (Residence and Business combined) and another for Repair. AI contends that the Commission rejected Staff's proposal to include measures for abandoned calls in the Part 730 rules in Docket 98-0453. In that proceeding, the Commission concluded, "measurement of abandoned calls is imprecise and the Commission declines to impose a measurement of abandoned calls at this time." See, Order, Docket 98-0453 at 8 (Feb. 9, 2000).~~

~~Subsequently, Ms. Jackson agreed in her rebuttal testimony that the Commission should not adopt a measure for the percentage of calls answered or abandoned. She testified, "Staff is prepared to accept replacement of the abandon rate with an answering time standard." (Staff Ex. 23, p. 13). She agreed that answer time data alone "will provide the Staff with the information needed" to monitor answering performance. In its Reply Brief, however, Staff proposes a standard for calls answered, similar to GCI's proposal. Staff would also recommend a single, combined measure for business and repair office answering. (Staff Reply Brief at 60-61). Staff proposes a benchmark of 90% of calls answered for its combined measure.~~

~~The GCI/City contend that this measure would be very useful in identifying any trend in the percent of calls that are abandoned because of excessive delays in response time and Staff witness Cindy Jackson testified that AI data suggests that an increase in the average speed of answer results in an increase in the percent of calls~~

~~abandoned by customers. Further, Company data shows that the percent of calls answered was markedly better for business than residential customer call centers. In short, the GCI/City claim, the Percent of Call Answered measure provides another indicator of AI's accessibility and responsiveness to customer inquiries and service needs. Although the Company has a 90% target level as its own internal measure, a 95% level should be established as the benchmark for each of these three measures the GCI/City contend. Thus, its use as a standard could result in a degradation of service. Moreover, use of such a standard would be consistent with the Commission's rationale for establishing a standard for the Company's % Installation Within 5 Days measure that was above the standard in Part 730 of the Commission's rules.~~

~~Commission Analysis and Conclusion~~

~~Adopted: Measure No. 10 Percent of Calls Answered Benchmark~~

~~The Hearing Examiners hereby direct the parties to better explain the measure, benchmark and their respective positions in their Exceptions.~~

Further Conclusions:

The following provisions shall be eliminated from the Alternative Regulation Plan:

a. **Proposed: Percent Dial Tone Within Three Seconds (Current)**
Elimination Supported by: AI, Staff, and GCI/City

b. **Proposed: Operator Speed of Answer—Intercept (Current)**
Elimination supported by: AI, Staff and GCI/City

c. **Proposed: Trunk Groups Below Objective (Current)**
Elimination supported by: AI, Staff and GCI/City

The Commission rejects the remaining proposed service quality measures. These proposed measures are largely duplicative, confusing and ill-defined for purposes of determining appropriate benchmarks. We do not find them to be useful.

Specifically, we reject the suggestion of GCI/City that we adopt a measure and benchmark for POTS Mean Installation Interval. We are already adopting two measures of installation performance (Installation within Five Days and Missed Installation Commitments). Although installation is an important aspect of service quality, it does not merit yet a third measure and benchmark, particularly given the complete lack of evidence that Ameritech Illinois has ever engaged in the type of conduct that GCI/City allege. In addition, we are unable to identify any factual basis upon which GCI/City based their proposed benchmark for this measure.

We reject GCI/City's proposed measure and benchmark for POTS Mean Repair Interval for similar reasons. We are already adopting two measures of repair performance (OOS>24 and Missed Repair Commitments). We do not see a need for a third measure, absent any evidence that Ameritech Illinois is, in fact, neglecting repair cases after the initial 24-hour period has run. Moreover, as we have discussed previously, internal targets do not provide appropriate bases for regulatory benchmarks.

Finally, we decline to adopt a measure for percent of calls answered, or conversely, calls abandoned. We find such a measure to be both redundant and imprecise, given that we have adopted measures that address answering performance more directly. Our decision here reaffirms the finding in Docket 98-0453 that "measurement of abandoned calls is imprecise and the Commission declines to impose a measurement of abandoned calls at this time." Order, Docket 98-0453 at 8 (Feb. 9, 2000). The evidence in this cause does not persuade to do otherwise. We further note that in Docket 98-0453, the Commission required all companies, including AI to report their Abandon Rate to the Chief Clerk.

E. Phase-In of New Benchmarks

Staff's Proposal

Both Staff and Ameritech Illinois ~~agree~~ contend that any new benchmarks should be phased in over time. The GCI/City disagree both with the concept and the specific proposals. Ameritech suggests that the new service quality standards be phased in over a three-year period, since they have not previously been regulatory requirements in Illinois. Staff proposes to set each new benchmark three percentage points below the relevant benchmark, with a one-percent increase every six months. This shorter time period, Staff claims, would allow consumers to receive the benefit of the new standards more quickly, and would provide Staff with more information for its analysis during the next review of the Plan.

Ameritech Illinois argues that Staff's proposed 18 month phase-in is too short to accommodate the necessary planning and budgeting. It further notes that changing the benchmarks every six months is inconsistent with the annual filing cycle for the Plan, which might cause interpretation and administrative problems for the Commission.

Commission Analysis and Conclusion

The Commission accepts Staff's proposal to place-in only "new" benchmarks over 18 months, and in the manner that it recommends. Thus, for the first six months of the 18 month period, the benchmark is set at three percent from the adopted standard. In the next six months of the 18-month period, the benchmark moves to 2%

below the adopted mark. For the final six months of the 18-month period, the benchmark will be at 1% of the stated benchmark. At the end of the 18-month period, and thereafter for all subsequent years, the benchmark is at the mark settled in this Order.

~~The Commission accepts Ameritech Illinois' proposal to phase in new benchmarks over three years. For each new benchmark adopted in this Order, the benchmark for the first year will be set two percent from the benchmark adopted, the benchmark in the second year will be set one percent from the benchmark adopted, and the benchmark in the third and subsequent years will be set at the benchmark adopted. We believe that a three-year phase-in will better coincide with both the Company's planning and budgeting cycle and with the Commission's annual review of the Plan.~~

F. Incentive Structure

The positions reflected in this section are those of record prior to the enactment of Public Act 92-0022. Our conclusions will reflect any new arguments or shifts in positions based on the law in force today.

AI's Position

AI proposes only one change to the Plan's service quality penalty structure. Currently, if the Company misses a service quality benchmark, a permanent 0.25% reduction of the PCI is required, even if it never misses that benchmark again. As a result, penalties for a single miss can accumulate far beyond the year in which the benchmark was missed. To correct this imbalance, AI proposes that the PCI be adjusted back upward when the Company subsequently achieves a benchmark that it had previously missed. According to AI, Ms. TerKeurst supported a similar proposal, when she testified on behalf of Staff in the Alt Reg Docket.

Staff Position

a. "Outside" the Price Index

Staff's primary recommendation is to remove the Q factor from the price index formula. As noted by Staff witness Staranczak, the penalties for failing to meet service quality benchmarks are too attenuated when filtered through the formula. Staff lists those deficiencies as follows:

- the deduction from the PCI results in penalties too small to provide adequate incentive to the company to meet the benchmarks;
- the deduction from the PCI provides inadequate incentive to the company to minimize its failures to meet benchmarks,

i.e., if the company is going to miss the target, it may as well miss it by a mile;

- to be more effective, penalties should be incurred in closer proximity to the problem, rather than imposed up to a year after the fact, as occurs under the application of the PCI;
- the effect of the Q factor on the consumers' bill is miniscule and usually goes unnoticed;
- the penalty should be recast as compensation which is provided directly to those affected by poor service, where possible.

To satisfy these concerns, Staff believes the service quality incentives should be addressed outside of the price cap formula. Staff believes that, whenever possible, consumers who directly experience poor service quality should receive direct compensation. and particularly so, if service is not repaired within 24 hours or service was not installed within 5 days.

Staff proposes that one of two options be available if the Company misses installing telephone service within 5 days:

(1) a credit on the bill for a free installation and a $25 credit for each day the Company is late, e.g., day 6 -$25, day 7 -$50, day 8-$75, etc., or
(2) a credit for a free installation, plus a Company-provided cellular telephone with free activation and local service, until installation is complete.

In addition, Staff sets out two possible options for the Company's failure to repair a consumer's service within 24 hours.

(1) the Company would be required to provide an automatic $25 credit if the customer is out of service for 25-48 hours. The credit increases for greater periods out of service, would be as follows: 48-72 hours: $50; 72-96 hours: $75; 96-121 hours: $100 (with an additional $25 assessed for each 24 hours the customer is out of service);

(2) the other option would require a $25 credit plus a Company-provided cellular telephone with free activation and local service until the repair is complete.

Staff witness Jackson testified that it would be difficult to devise direct consumer compensation for the remaining service quality standards (i.e., operator answer time, trouble reports, abandon rate, repair and business office answer times, and repeat trouble reports (installation and repair)) as it would be difficult, if not impossible, to identify the harmed consumer. Therefore, Staff recommends a more generalized compensation for any failure to meet these standards. For any one of the six standards the Company fails to meet, Staff would have all customers receive a $2.25 credit on one monthly bill. The credit would apply for each standard and for each month that each standard is missed.

Staff notes that there is evidence on record showing that the Company would support direct consumer compensation for the benchmarks as long as the compensation levels reasonably equated to any rate reductions that would occur under the formula. (Tr. 676 - 679). According to Staff, Ameritech did not provide sufficient reason as to why such direct compensation should be tied to the price cap formula. As Staff notes many times over, the 'Q' factor rate reductions have proven to be insufficient incentive to Ameritech to provide adequate customer service. Ameritech has provided no basis for Staff or the Commission to believe that the Company's performance under this proposed standard would be any different.

b. "Inside" the Price Index

If the Commission chooses to keep the service quality indicator in the price cap formula, Staff recommends that the amount for OOS>24 and installations should be increased from .25% to 2% to provide the Company with the incentive to meet the minimum requirements. Staff also recommends that the remaining service quality standards and newly proposed standards should be given an equal weighting of .25%. Further, the Company would receive a score of zero for each of the benchmarks that it meets. Finally, Staff recommends that the rate reduction be returned to zero if the Company met the benchmark for 12 consecutive months, not on an average of 12 months.

Staff notes that the distribution of .25% or $4 million per infraction over all of Ameritech's access lines only gave customers a credit of approximately 65 cents for each missed benchmark per month. Staff asserts that the consumer compensation offered by Ameritech for missing any of these benchmarks is not meaningful to customers. Moreover it has been clearly established Staff claims, that Ameritech has failed to adequately perform under the same level of penalty Ameritech proposes here. The one incentive level that seems to have attracted the Company's attention is the $30 million penalty imposed by the Commission in Docket 98-0555 – and, even then, the Company failed to meet the relevant standard. Thus, a higher level of penalties must be set for any extension of the Plan, if the Commission determines that the 'Q' factor should continue to operate. Therefore, Staff asks the Commission to accept its foregoing recommendations.

c. Additional Proposal

Staff testified to a third option, one based on graduated penalties, where each annual benchmark penalty would increase as the service quality declined. The Company's performance would be measured on a three-month average. A graduated penalty structure would provide the Company with an incentive to keep trying to meet the benchmark. Where there are capped penalties, and a longer, i.e., annual performance measure, and where the company knows it will fail to meet the benchmark, the Company might withdraw or minimize its efforts and resources until the following year, without incurring any additional consequences. In the meantime, however, customers would suffer from degrading service quality. Therefore, Staff recommends that, if the Commission adopts this option, - for the first 5% below the benchmark, the Company should be compelled to reduce rates by 2%. As service quality further declines in continuing 5% intervals - the rates should be decreased by 1.5% for each additional 5% decline in service quality.

GCI/City Position

a. "Outside" the Price Cap Index

The GCI/City believe that the service quality adjustment adopted in a modified plan should be administered separately from the price cap index so that the financial consequences of poor service quality are disassociated from AI's classification of services as competitive or non-competitive.

According to GCI/City, the service quality adjustment for failure to meet a benchmark should be set at $12 million per violation. Further, GCI would have the adjustment be increased depending upon (1) whether more than one violation has occurred, (2) the severity of the violation; and (3) whether there are violations in prior years. With such escalations, CUB claims, the Commission would eventually find the customer credit levels large enough to motivate the Company to correct service related problems.

If the Company violates more than one standard in any given year, GCI proposes that the service quality adjustment for each measure be added together for that year. The adjustment would also increase with the severity of the service quality degradation to avoid inadvertently having the Company "give up" on a standard if it appears that it will not be met in a given time period. The severity related factor reflects how far from the standard the Company performs. For example, if the standard is missed by 100%, the adjustment would be increased by 50%; if the standard is missed by 200%, the adjustment would be increased by 100%.

Under GCI's proposal, if AI were to continue to violate service quality standards year after year, the customer credit for that measure should be permanently increased by a factor of 1.5 each year. This escalation is necessary, GCI claims, because repeated violations demonstrate that the existing adjustment has not proved sufficient to incent the Company to make the needed service quality investment. Id. The escalation for repeated violations would be made irrespective of whether the Company violates the same or a different standard, and is necessary in light of AI witness Gebhardt's concession that AI has altered its dispatch of repair personnel in response to the Commission's service quality requirements. (An example of the calculation is provided in GCI/City Ex. 2.0 at 74-75).

GCI would have the full amount of the service quality adjustment be issued to ratepayers in a "one month" credit to customers of both AI's competitive and non-competitive services. The total credit would be allocated to retail consumers, carriers purchasing UNE, wholesale, interconnection and transport and termination services on the basis of gross revenues from each group. For retail and wholesale customers, the credit should be an equal amount per access line, and the other carriers should receive a credit on one month's bill.

b. "Inside" the Price Cap Index

For the service quality adjustment to the Price Cap Index (PCI) to be effective, GCI argues, it must be substantially more than the current .25% adjustment. By increasing the adjustment to 1.25%, as GCI proposes, the Company would be required to reduce rates by $13 million per violation, which is slightly more than what they are proposing for the adjustment outside the PCI. Similar escalations for severity of the service quality degradation, repeated and multiple violations to those proposed for adjustments outside the PCI should also be added to the formula. (The formulas and examples of calculations are included in GCI Ex. 2.0 at 77–78).

c. Additional Consumer Compensation

The GCI/City maintain that the credits to consumers who are "out of service" or who wait more than" 5 business days for installation" should be strengthened, and customer compensation should apply equally to consumers of services classified as competitive and non-competitive. In GCI's view, consumers of wholesale services, such as CLECs who provide local service through resale or UNEs, should also be entitled to compensation. Otherwise AI consumers would receive compensation for poor quality service, but CLECs and their customers would not receive equal treatment. This could have the unintended consequence of further degrading services to CLECs, and undermining the growth of competition, because AI may give higher priority to consumers for whom it is obligated to pay compensation than to CLEC customers.

The compensation scheme that GCI/City propose is as follows:

- POTS installation delayed beyond 7 calendar days or the day requested by the consumer, whichever is later: ($20.00 per 24 hours)

- Repair delayed beyond 24 hours after notice to Company, or missed repair commitment: ($50.00 per occurrence)
- Missed installation or repair appointments in absence of 24 hour notification: ($50.00 per occurrence)

The customer compensation credits for installation delays, according to GCI/City, should be automatic (not discretionary) and payable for each further 24-hour delay. In addition, the non-recurring installation charge should be waived, as is currently authorized by AI's tariff for private line service, when the installation interval exceeds Commission standards. The repair and missed commitments compensation would apply when consumers are left waiting for repair service after 24 hours or after a repair commitment made by the Company has expired. Finally, to incent the Company to honor its appointments with customers and to schedule appointments realistically, failure to keep an appointment should result in a $50.00 payment or credit to the consumer, unless the Company notifies the consumer 24 hours in advance. In addition to creating appropriate customer service incentives, this measure provides reasonable compensation to consumers who have lost time from work or otherwise managed their schedule to await a repair or installation appointment.

In addition to providing the above direct consumer compensation, the GCI/City would have AI establish a cellular telephone loaner program, so people who are without service can have telephone service available to them while they await installation or repair. And, because so many CLECs are resellers, and still dependent on AI for basic service connections and some repairs the GCI/City believe that this program should be available to wholesale as well as retail customers.

These direct customer compensation measures are necessary, the GCI/City maintain, to insure that the people inconvenienced by service quality degradation are compensated for the time they spend without telephone service, for the time and money they lose waiting for technicians who never appear, for the money they lose by having to obtain replacement service, for the money lost from missing work days or business calls, and for the increased risk associated with being unreachable when medical and other emergencies arise.

AI Response and Additional Proposal

AI asserts that Staff's proposal for handling service quality "outside" the price cap index is clearly excessive and punitive. It would impose a $13 million penalty for each month in which the Company missed a benchmark, for seven of Staff's ten proposed measures. The maximum penalty for each measure, AI claims, is nearly 40 times the penalty Staff proposes "inside" the price index.

AI witness Hudzik evaluated the likely impact of this proposal, assuming that Ameritech Illinois would perform at the same level it did in 1999, when it met all eight of the Commission's existing benchmarks. The evaluation showed that the non-customer specific penalty would total $351 million per year. In addition, Ameritech Illinois would pay significant customer-specific penalties. Such penalties would be completely unreasonable in light of the high quality of service provided in that year. Indeed, AI notes, Staff witness Jackson conceded that the likely penalties were higher than she anticipated when she developed Staff's proposal. (Tr. 2052-53).

According to AI, the enormity of the penalties is the result of two factors. First, because Staff's proposed credit of $2.25 would go to all customers, not just affected customers, the monthly penalties would be approximately $13 million per month. Second, by applying annually-based benchmarks to monthly performance, a significant number of monthly misses is virtually guaranteed, even if the Company performs at levels at or above the years in which the benchmarks were set. Indeed, Ms. Jackson conceded that her proposed monthly penalties are fundamentally inconsistent with Staff's methodology for calculating benchmarks. That methodology is specifically intended to measure annual, not monthly, performance. (Tr. 2055).

AI maintains that the GCI/City proposals -- both "inside" and "outside" the price cap index -- are clearly unreasonable. Those penalty structure would increase the annual base penalty to approximately $12 million inside the price index and approximately $23 million outside the price index, coupled with a "multiplier" of 1.5 to be applied whenever the Company missed any service quality measures in consecutive years. The GCI proposals, AI claims, would result in annual penalties of hundreds of millions of dollars annually, and billions within the next five-year term of the Plan, even if service quality were maintained at excellent levels.

Mr. Hudzik evaluated the impact of the GCI proposals for addressing service quality "outside" the price index calculation. In his first scenario, he assumed actual performance levels from 1999 to the extent such data are available, and his best estimate of a reasonable 1999 performance level where actual data were not available. He also assumed that level of performance would continue over a five-year period. The results of Mr. Hudzik's evaluation showed that even if the Company matched its excellent 1999 performance, it would incur a penalty of $288 million in the first year of the new structure, escalating to $1.45 billion by the fifth year, with a five-year total of $3.8 billion. This number does not even include the credits which would have been paid to customers for missed installation and repair appointments under the GCI/City Plan. The GCI/City's proposal for addressing service quality "within" the price cap index is equally unreasonable AI claims.

AI notes that both Staff and the GCI/City would prefer that service quality be removed from the price cap index and penalties imposed in the form of customer credits, rather than revenue reductions. In principle, Ameritech Illinois does not oppose removing service quality from the price index calculation, nor does it oppose customer-specific credits, to the extent the Company's records are sufficient to determine which customers have been affected by service problems. The Company argues, however, that certain aspects of both Staff and GCI/City proposals for addressing service quality outside the price index render those proposals unreasonable and punitive.

With respect to 00S>24, Ameritech Illinois argues that its conduct since 1999 demonstrates that the existing penalties (including the $30 million merger penalty) are adequate to maintain reasonable performance. As shown by the very significant improvement in 00S>24 performance since 1998, the existing incentives have been adequate to insure the Company strives to meet the benchmark. Moreover, Ameritech Illinois asserts, the problems experienced in the latter half of 2000 have been addressed by force additions in the Network organization. These force additions demonstrate a strong commitment by the Company to deliver the required level of service.

Ameritech Illinois also opposes Staff's proposal to increase the penalty for Installation Within Five Days. The Company emphasize that it had always reported this measure in the same way, consistent with the manner used when the original benchmark was developed, and it has met this measure on a consistent basis. Ameritech Illinois does not object to redefining this benchmark. But, to penalize the Company when it has never missed the current benchmark, would be unfair.

The Company argues that the lack of proportionality between Staff's proposals "inside" and "outside" the price index is, by itself, strong evidence that Staff's "outside the cap" proposal is unreasonable. Ameritech Illinois and the GCI agreed that the financial impact of the Plan's service quality component should be approximately equal, whether service quality is addressed inside or outside the price index. Staff's explanation for the difference was that the proposed credits, if reduced to an amount equivalent to the current penalties, would not be meaningful to customers. Ameritech Illinois contends that the key question is not whether a penalty is "meaningful" to customers, it is whether the penalty is adequate to maintain performance at an appropriate level. Ms. TerKeurst testified that the goal should be to determine and establish financial consequences that are sufficient to ensure that Ameritech Illinois complies with the adopted standards.

AI Response - "Outside" the Price Index

While Ameritech Illinois does not object to the idea of flowing service quality incentives back to affected customers, it states that customer compensation per se is not the goal of an alternative regulation plan. Instead, as GCI recognized, that goal is to provide the level of incentive necessary to maintain service quality at an appropriate "going in" level. Assuming the Commission's penalties are adequate, providing additional compensation would amount to a double penalty.

AI notes that both Staff and GCI would impose customer-specific credits with no regard to whether the Company met the service quality benchmarks in the Plan. The Company argues that this is also inappropriate. In Staff's case, Ameritech Illinois explains, the proposal is inconsistent with Ms. Jackson's direct testimony, wherein she recognized that credits should be tied to benchmark performance. It is also inconsistent with the concept of maintaining service at benchmark levels. If all customers receive credits regardless of service levels, AI asserts, the benchmarks are meaningless. The idea of requiring credits without regard for performance levels, is equivalent to requiring perfect or 100% performance. This, AI contends, is inconsistent with the Public Utility Act, which requires "reasonable" service, not perfect service. 220 ILCS 5/9-201. "Reasonable service to all customers does not contemplate a perfect service free of problems . . ." Domestic Utility Services Co., Ill. C.C. Dkt. 81-0515, 1982 PUC LEXIS 10, p. *9 (Nov. 18, 1982).

Ameritech Illinois notes that it is possible to maintain a record of customers that have been affected by installation and repair delays and by missed installation and repair appointments. (Tr. 1967-68). Therefore, customer-specific credits can, in fact, be conditioned on whether the Company meets the relevant benchmarks and paid to the appropriate customers once the year's service quality data are available.

Ameritech Illinois further notes that the Staff and GCI/City's proposed customer credits for installation and repair delays are excessive, as they are not capped at a level that reasonably approximates the value of the service to be provided. For example, if Staff's proposed $25 per day penalty were applied, without a cap, to a situation in which a customer that experience an extended installation delay as a result of a lack of facilities in the area, the penalty would total $750 over 30 days--far in excess of the value of service (or the cost of obtaining replacement service). In the Company's view, this would create a windfall, not reasonable compensation. Both as a matter of regulatory law and as a matter of general commercial law, AI maintains, compensation should be limited to the value of service. In re Illinois Bell Switching Station Litigation, 161 Ill. 2d 233 (1994). To be sure, Ameritech Illinois observes, the ComEd credit program that Ms. Jackson cites as an example is capped at $100, which reasonably approximates the value of service.

If service quality is removed from the price index calculation, Ameritech Illinois proposes the following customer-specific credits, which are essentially the same as those currently in place in Ohio:

For 00S>24 misses:

- OOS reports lasting from 24 hours to 48 hours: a pro rata share of the customer's monthly regulated service
- OOS reports lasting from 48 hours to 72 hours: a credit equal to one-third of the customer's monthly regulated service
- OOS reports lasting 72 hours to 96 hours: a credit equal to two-thirds of the customer's monthly regulated service

- OOS reports lasting in excess of 96 hours: a credit equal to one month of the customer's regulated service

For Installation Within Five Days misses:

- Installations completed within six to nine business days: One-half of the non-recurring installation charges associated with the order
- Installations completed in 10 or more business days: 100% of the non-recurring installation charges associated with the order

Finally, Ameritech Illinois opposes any requirement that cellular telephone loaners be provided in cases of installation delay. As Mr. Hudzik explained, customers that experience installation delays are not paying for service during the delay and therefore need not be compensated for lost service. Moreover, they will typically have an opportunity to make alternative arrangements for service in the interim. So too, cellular telephone loaner programs impose significant expenses and administrative burdens. Thus, Ameritech Illinois argues their use should be minimized whenever other means of customer compensation are available.

Commission Analysis and Conclusion

In the Alt Reg Order, the Commission was mindful of the need to build certain incentives into the Plan, based on its recognition that:

> one of the theoretical risks of price regulation is that the Company may, while seeking to maximize its income, reduce expenditures in certain areas in such a manner as to impact service quality adversely. (Order at 58).

Indeed, the whole purpose for the "Q" factor in the existing plan and the intent behind the many alternative proposals set out in this proceeding is to provide the Company with an incentive to meet its service quality obligations. These obligations are set out in the performance measures we here adopt and the corresponding benchmarks thereto settle the mark at which service quality is to be maintained. Fashioning the right incentive scheme, at this juncture, is by far the more challenging task.

During the pendency of this docket, the Public Utilities Act was amended, and one of its new provisions, i.e., Section 13-712, bears on our decision-making in this instance. In Section 13-712, the General Assembly declared its intent that "every telecommunications carrier meet minimum service quality standards in providing basic local exchange service." 220 ILCS 5/13- 712 (a) (emphasis added). In line with this pronouncement, Section 13-712 directs the Commission to promulgate service quality rules, sets out minimum service quality standards to be included in the Commission's rule, and further provides a detailed schedule of customers credits as compensation for out of service conditions, installation and repair delays and missed repair and installation appointments. See, 220 ILCS 5/13-712 (d) and (e).

By Order of July 10, 2001 and an Amendatory Order entered on July 25, 2001 in Docket 01-0485, the Commission adopted emergency rules to implement Section 13-712 of the Act. The rules at 83 Ill.Adm. Code 732 are effective August 1, 2001. Along with every other telecommunications carrier, AI is subject to our emergency rules as of August 1, 2001, meaning that the customer credits authorized therein are in effect even as we write the instant Order. Pursuant to our rules, AI is obligated to provide its customers credits at the minimum levels outlined by Section 13-712 for the infractions listed below:.

1. Out of Service over 24 hours

24-48 hours	a pro-rata portion of the monthly recurring charges.
48-72 hours	33% of monthly recurring charges
72-96 hours	67% of monthly recurring charges.
96-120 hours	100% of monthly recurring charges.
more than 120 hours	alternative telephone service or $20 per day(customer option).

See, 83 Ill.Adm.Code 732.30 (a).

2. Installation

after 5 business days	50% installation charges (Link Up credit of $25).
after 10 business days	100% installation charges (Link Up credit of $50).
each day thereafter	alternative telephone service or $20 per day (customer option)

See, 83 Ill. Adm. Code 732.30 (b).

3. Missed Appointments.

Installation – $50 per missed appointment in absence of 24 hours notice
Repair -- $50 per missed appointment in absence of 24 hours notice.

See, 83 Ill.Adm. Code 732.30 (c).

Our rules also provide, in part and consistent with Section 13-712 (e)(4), that :

> If the violation of a basic local exchange service quality standard is caused by a carrier other than the carrier providing retail service to the customer, the carrier providing

retail service to the customer shall credit the customer as provided in this Section. The carrier causing the violation shall reimburse the carrier providing retail services the amount credited the customer.
See 83 Ill. Adm. Code 732.30(d).

We further note that in Section 13-712, the General Assembly has spoken to the "cellular loan" proposals of Staff and GCI/City by requiring every telecommunications carrier to provide its customers alternative telephone service in instances where its failure to install or repair service is sufficiently prolonged.220 ILCS 5/13-712 (e). In accord therewith, our Part 732 emergency rules direct carriers failing to install basic residential service within 10 days of a request, or within 5 days of a customer's requested installation date to provide the customer affected thereby with the options of either a $20 per day credit or an alternative telephone service. See, 83 Ill. Adm. Code 732.30 (b). The rules also specify that for each day or portion thereof that a service disruption continues beyond an initial 120-hour period, the carrier must provide "either alternative telephone service or an additional credit of $20 per day at the customer's option." 83 Ill. Adm. Code 732.30 (a). Along with every telecommunications carrier, Ameritech is subject to, and required to comply with, these directives.

Noting the provisions of Section 13-712 and our emergency rules, Staff and the GCI, nevertheless, would have AI be required to provide its customers additional and immediate compensation under the Plan in roughly the amount of $25 per day of delay for OOS>24 hours misses and Installations beyond 5 days misses as per Staff's recommendations and a $50 credit for missed appointments under the GCI/City's proposal. (Staff Brief on Exceptions at 16,17; GCI /City Exceptions at 13). Staff believes that the additional customer compensation scheme it proposes is well within the Commission's authority (under both Section 13-712 and Section 13-506.1) to impose. Thus, it has raised a question of statutory interpretation that requires us to ascertain the intent of the legislature in these instances.

It is well-settled law that a court should consider each part or section of a legislative act in connection with every other part or section, and not each part alone, in determining the purpose or intent of the legislature. Casteneda v. Illinois Human Rights Commission, 547 N.E.2d 437. (1989). Legislative intent is to be derived from manifest intent of enactment as a whole, and courts must avoid interpretations of statutory language which are so literal or so overly broad that they fail to give effect to purpose which legislature intended. In re Estate of Bartolini, 674 N.E. 2d 74 (1st Dist. 1996). Each part or section of a statute should be construed with every other part or section so as to produce a harmonious whole. Sutherland, Statutory Construction. 6th Ed. Vol.2A, Sec 46.05 at 154 (2000).

As we see it, the Commission's goal under Section 13-506.1 is to "maintain" service quality at certain specified levels for all customers and not to directly compensate any individual customers. When establishing the Plan in 1994, the

Commission sought to maintain service quality by adopting a set of performance measures, benchmarks, and an incentive component for failure to meet the assigned benchmarks. In this proceeding we have again considered evidence and arguments as to the types of performance measures that should be included in the Plan going forward, the benchmarks that are most appropriate, and the incentives necessary to inspire the Company to meet the "annual" benchmarks.

By contrast, the goal of Section 13-712 is to have customers be compensated immediately and directly for certain service failures (subject only to certain exclusory events or circumstances detailed in subsection (e) (6)). Under the statute, the Commission is now required to enforce basic service quality standards on all carriers regardless of how they are regulated. Indeed, the General Assembly did not exempt companies operating under alternative regulation from the purview of Section 13-712. Furthermore, while the Commission may impose more than the minimums directed by Section 13-712, it may only do so through the rulemaking process. See 220 ILCS 5/13-712 (c).

AI contends that there is no logical relationship between the service quality goal of Section 13-506.1, i.e., to maintain service at established levels, and customer compensations mechanisms which are unrelated to the annual benchmarks being adopted in the Plan. We agree. Stated another way, customer compensation, provided independent of performance, is fundamentally inconsistent with the Commission's approach to maintaining service quality. To be sure, this approach was settled well before the General Assembly reenacted Section 13-506.1.

In our view, the Staff and GCI proposals for the Plan are wholly unrelated to the performance benchmarks we here adopt and further seek to raise the minimum compensation standards set out in Section 13-712 outside of the rulemaking required therein. These proposals might make sense if the General Assembly had exempted companies operating under alternative regulation from the provisions of Section 13-712. This, however, is not the case.

At an earlier time, prior to the enactment of Section 13-712 (and the adoption of our emergency rules implementing same) we might have been persuaded by Staff's "immediacy of relief" arguments, and the nature of certain service quality obligations to go outside the benchmark standard and require AI to give its customers credits (for the most egregious service infractions) at the earliest and without waiting for the end of year benchmark figures.

The "immediacy" of relief for the most egregious service quality violations, however, has now been addressed by the General Assembly. Thus, with the enactment of Section 13-712 (and the emergency rules) we are no longer inclined to proceed in this irregular fashion. The urgency has subsided as the provisions of Section 13-712 provide both (a) an incentive for AI to perform; and (b), address the immediacy of relief for customers affected by any substandard performance in the most critical areas.

Nevertheless, this does not complete the incentive scheme we deem proper for the Plan. While AI maintains that it should not be subject to any immediate customer compensation requirements beyond those required under Sec 13-712 (and adopted in the emergency rules) even it does not contend that this should be the limit of our incentive structure.

It is undisputed that the Commission has authority to fashion a Plan that will satisfy the statutory requirements of Section 13–506.1. The powers we possess, however, must be exercised judiciously according to reasoned judgment, the evidence, and sound principles. We will adopt, therefore, an incentive scheme that honors the measures and benchmarks heretofore adopted for the Plan and the interests of the statute.

~~In continuing with the Plan, we regard the Company's specific performance of its service quality obligations as our preeminent goal. To further this objective, the Commission must assign certain incentives to the Plan so that service quality is maintained pursuant to the mandate of Section 13-506.1 of the Act.~~

Our aim is to promote efficient investment in compliance. In other words, if service quality failure is a manpower problem, AI needs to ensure that its employee levels are sufficient to meet workload demands. If there are network deficiencies, AI must invest the necessary funds to correct any ill-functioning systems. In each instance, an expenditure of monies is at the heart of the solution. The choice we provide to the Company is whether it will spend the amounts required to maintain service at reasonable levels or whether it will forfeit the money in credits to customers.

It is the primary recommendation of both Staff and the GCI/City that the Commission remove the Q factor from the Price Index formula. We agree with those proposals. Further, the Commission is interested in moving the credits to those customers directly affected by service quality failures to the extent possible.

~~Any one of the incentive and customer compensation schemes we reviewed, however, would effectively absorb the penalties through administrative costs (which in fairness should be counted). Further, these proposals set out a number of schemes in a general fashion without sufficient explanation of the details for implementation or the cost and effort involved. For example, the record gives no tally of the total financial cost and administrative tasks associated with a cellular loan program or the abuse potential. It is one thing to propose what appears to be an attractive option. It is an entirely different thing to substantiate the inner workings, the costs, efficiency, potential abuse and the legal pitfalls of such a program.~~

~~In our view, as with most things, the simpler the better for all concerned. We recognize and appreciate that Staff has set out a number of goals, all of which it attempts to satisfy through its proposal. The objective, however, is not to create the perfect penalty to fit each and every conceivable situation. To the contrary, the objective is to set a reasonable penalty for the infraction that is direct, meaningful to both the customer and the Company, easily administered and in keeping with sound legal principles. In our view, penalties gain no value from being complicated — that would just engender a new set of frustrations for the public and create a new set of obligations on the Company.~~

In examining our work so far, we have adopted a number of performance measures and annual benchmarks have been set. This done, we consider it folly to impose penalties on monthly performance when benchmarks are derived on an annual basis. Indeed, no party proposed monthly benchmarks or explained the viability of using same. AI is also right to note that the incentives we set out must be assigned in relation to the annual benchmarks and not under a standard of perfect or 100% performance such as a monthly assessment would impose. These are critical factors we must keep in mind.

Generally, penalties are paid to a single entity, and usually in one set amount. Under the current proposals, penalties would be distributed as credits to customers. The reality is that all the proposals are forms of compensation. We first resolve the question as to who should be the recipient of the penalty credits.

We recognize that the standards of service are not all equal. Both Staff and the GCI/City tell us that Installation and Repair are the main components of telephone service. Indeed, Staff singles out these measures as worthy of enhanced penalties and attention under both of its proposals. Notably, AI informs us that it is possible to maintain records of the customers affected by installation and repair delays and by missed installation and repair appointments. On this basis, it is reasonable to distribute credits for these particular infractions to the actual aggrieved parties. This will be done.

A penalty is a penalty. The company is likely to be indifferent as to whom it is paid or credited. For the individual customer, however, it matters a great deal. Moreover, as the Company keeps track of its affected customers, it will be constantly reminded of the risk of penalty if it cannot meet the annual benchmark. This itself is an incentive for the Company to improve performance in the each of the following months.

With respect to the Company's failure to meet the benchmarks on other measures ~~are here~~ where aggrieved customers cannot be easily tracked, the penalty credits would be distributed equally among all of AI's noncompetitive customers~~.~~ and in accordance with Section 732.30(d) of our emergency rules. The question remains whether the per aggrieved customer amount reasonably approximates the value of service denied or whether it meets Staff's concern that it be meaningful. To the extent that only affected customers, suffering the worst inconvenience share in the penalty, it is more likely than not that the credits will be meaningful as well as equitable. Those customers that are less inconvenienced will reap lesser credits and that, too, is altogether reasonable.

We are lead to the ultimate question, i.e., what is to be the penalty for the infraction. The penalty incentive for violations of a particular standard in our view should equal the amount of money to be spent on compliance efforts in order to signal the importance of the obligation and the seriousness by which it should be perceived. We, however, do not have such particulars. After much thought and full review of the proposals before us, the Commission settles on a penalty structure that is reasonable, realistic and geared to send the right signal on compliance. We are not persuaded by any of the exceptions arguments to deviate from this scheme.

We will set an amount of $8 million for each failure to meet the "annual" benchmark. Our starting level recognizes that the oft-cited $4 million penalty in the Plan's initial term was not meaningful enough in all instances and thus, must at least be doubled. This amount will rise by another $2 million for any ~~each~~ year of the plan~~.~~that the Company has missed the previous years' benchmark. The forewarned escalation in penalties gives the Company ~~the~~ notice ~~and opportunity to~~ that it must make the necessary investments where and how needed ~~beginning~~ today so that it can avoid ~~the risk of non compliance, i.e. the penalty.~~incurring penalties in the future. We further adopt Staff's recommendation that any penalty credited to a customer's bill be explicitly identified and accompanied by a prominent bill message to explain the credit.

~~**Penalty Illustration**~~

~~Year 2001~~	~~$ 8 million~~
~~Year 2002~~	~~$10 million~~
~~Year 2003~~	~~$12 million~~
~~Year 2004~~	~~$14 million~~
~~Year 2005~~	~~$16 million~~

In addition, ~~if~~ in any year where a particular benchmark is not met by more than 5%, ~~or if the same benchmark was also not met in a previous year,~~ an additional $2 million will be added. Further, for each additional 5% increment thereafter that the benchmark was missed ~~if a benchmark is not met by more than 10%,~~ still another 2 million will be added to the standard penalty amount.

For example, we consider fictional measure " X " which carries a benchmark of 90%. If the Company misses the benchmark by 6%, or reports 84% compliance in year 2002, the penalty for that year is increased by $2 million. If, however, the benchmark for year 2002 has been missed by 11%, meaning only 79% compliance, still another $2 million (or a $4 million increase) will be added to the penalty for year 2002. This scheme carries forward for each year of the Plan and there is no limit to the 5% increments (and associated $2 million increases) that can be incurred.

The OSS>24 hrs. performance measure is a special case. It has, and continues to warrant special attention. Hence, for this measure alone, the penalty incentive will continue at the $30 million amount originally set in the merger Order, Docket 98-0555 and is now incorporated into this Plan. We take notice of our order in that docket and the basis for our setting on such amount, i.e., that it is the last sum equated with meeting compliance with this service obligation. This measure too, will be subject to increases where the benchmark is not met in a previous year, much like Staff suggests. The increase for misses attendant to this measure is set at $4 million. For example, if the OOS>24 hrs. benchmark is missed in year 2001, the penalty shall be $30 million. If the benchmark is missed in year 2002, the penalty will be $34 million. If the OOS >24 hrs. benchmark is unmet in 2003, the penalty will be $38 million, and so forth.

The Commission rejects the Staff and GCI/City compensation schemes because an immediate and automatic monthly credit such as they propose would void the benchmarks altogether and require "perfect performance" - a standard that is simply not supportable. Further, such cannot now be reconciled with the recent statutory amendments now in force.

~~That said, we cannot discount the possibility of situations so egregious that even this benchmark irregularity will need to be tolerated. Thus, in instances where a customer waits for installation more than 2 extra days or is out-of-service for 48 hours or more, we direct Ameritech to provide on the next bill, the customer credits as specified in its proposal, to wit:~~

~~**For 00S>24 misses:**~~

- ~~OOS reports lasting from 48 hours to 72 hours: a credit equal to one-third of the customer's monthly regulated service~~
- ~~OOS reports lasting 72 hours to 96 hours: a credit equal to two-thirds of the customer's monthly regulated service~~
- ~~OOS reports lasting in excess of 96 hours: a credit equal to one month of the customer's regulated service~~

~~**For Installation Within Five Days misses:**~~

- ~~Installations completed within seven to nine business days: One-half of the non-recurring installation charges associated with the order~~
- ~~Installations completed in 10 or more business days: 100% of the non-recurring installation charges associated with the order~~

~~In fairness, and to avoid a double penalty, if AI meets the benchmark, for these measures at the end of the year, it can deduct those credits and reasonable administrative costs from any other penalty amounts it might otherwise owe. And if it~~

~~fails the benchmarks, it may also deduct the credits and reasonable costs from the penalty assessed.~~

In promulgating service quality rules for basic local exchange service, Section13-712 provides that the Commission "may include fines penalties, customer credits and other enforcement mechanisms." 220 ILCS 5/13-712 (c). The statute further provides that:

> In imposing fines, the Commission shall take into account compensation paid by the telecommunications carrier to its customers pursuant to this Section in compensation for the violations found pursuant to this Section. (Id.)(emphasis added).

At the present, the Part 732 emergency rules promulgated pursuant to Section 13-712 do not contain any fine or penalty provisions. To be sure, Staff contends that the Commission should decide the scope of "compensation requirements and remedies" for Ameritech in this docket. (Staff Reply Brief on the Effects of HB2900 at 15). Staff further clarifies that that it would not have Ameritech be subject to compensation requirements under both the Plan and the Part 732 emergency rules at the same time. (Id. at fn 5).

Nevertheless, Staff believes that the "take into account compensations or credits paid" language in Section 13-712(c) is nothing more than an additional criterion to be considered by the Commission in setting penalties. (Id. at 16). According to Staff, this is not a direct mandate to preclude a carrier from paying both direct customer compensation and service quality penalties, especially with regard to a carrier operating under an alternative regulation plan.(Id.)

Staff's construction of Section 13-712 (c) is not persuasive. The General Assembly has prefaced the "take into account" language that Staff cites with the term "shall." When used in statutes, contracts, or the like, the word "shall" is generally imperative or mandatory. In common or ordinary parlance, and in its ordinary signification, it is a word of command See, Black's Law Dictionary, 5th Ed. 1233.(1979). The courts have recognized that while the use of the word "shall" is generally regarded as mandatory, it can be construed as meaning "may" depending on the legislative intent. Andrews v. Foxworthy, 373 N.E. 2d 1332, 1335 (1978). Where, however, the word is employed with reference to any right or benefit to anyone, and the right or benefit depends upon giving a mandatory meaning to the word, it cannot be given a permissive meaning. (Id). This is just such a case and the word "shall" denotes Commission action with none of the discretion that Staff would suggest. Moreover, Staff's interpretive argument overlooks the fact that the statute in question does not in any way exempt carriers operating under alternative regulations from this directive. Since the General Assembly did not excuse AI from the provisions of Section 13-712, we must take account of the immediate customer compensation credits for which it is liable under our emergency rules.

In the final analysis, Staff's recommendation to not have AI offset compensation costs against penalties, is simply not borne out by the reasonable interpretation of the statute. Whereas the GCI/City also contend that no deduction of individual customer penalties from the overall, annual penalty amounts paid by AI should be permitted, the reasons they offer are even less convincing. (GCI/City Brief on Exceptions at 69-71). To be sure, no party has discussed the concepts of double penalties or double recovery or the policies that are implicated thereby.

Insofar as the service quality standards in Section 13-712 are the same as four of the performance measures adopted in this case, i.e., OOS>24 hours; Installation within 5 days, Installation appointments and Repair appointments and, insofar as the incentives we structure are tantamount to a fine or penalty under Section 13-712, we consider it appropriate and will have AI deduct any customer compensation credits paid out under Section 13-712 (as implemented under our emergency rules) from the overall penalty it might incur for not meeting the Plan benchmarks on these four measures. In doing so, we recognize, as indeed we must, that the customer credits imposed by AI through Section 13-712 and our rules are a part and parcel of the "incentive" to have the Company meet its service obligations.

As we see it, by permitting the Company to reduce the benchmark penalty by the amount of credits already provided customers, the net effect is that:

1. the total amount paid by the Company in both immediate (under Section 13-712) and end-of-year (under the Plan) credits is the amount of the benchmark "incentive;"

2. aggrieved customers receive immediate and direct compensation for the most serious service infractions; and

3. the class of customers divide any of the remaining amount that our penalty scheme imposes.

In our view, the whole of this incentive scheme meets with the law in all its particulars.

As a final matter, AI notes that newly-enacted Section 13-71 (a) (6) provides that the credits due for violations under the statute, do not apply if the violation occurs as the result of one of the seven (i – vii) circumstances it defines. (Initial Brief of AI on the Impact of the New Legislation at 6-7). AI proposes that this comprehensive list of limitations and exclusions, already reflected in the Commission's emergency rule, be adopted for all measures of service quality in the Plan.

No party or Staff objects to this proposal. We see no reason why this well-developed list of exceptions should not be made applicable to all of the services measures adopted herein. Hence, the Commission takes express notice of Section 13-712 (e)(6) and incorporates the specifics of this provision into the Plan going forward.

In closing out this section of our Order, we remind AI ~~that nothing is expected of the Company only that it work to maintain service quality at the required levels~~ that the maintenance of service quality is of the utmost importance to the health, safety and welfare of the people of Illinois as well as to the State's economy Recent legislative action confirms this view. Accordingly, we admonish Ameritech to bring all necessary resources to bear in resolving any service quality problems. A failure to do so will cause us to revisit this issue.

G. Other Service Quality Issues

1. Reporting

GCI/City Position

The GCI/City maintain that AI serves 85% of the access lines in Illinois, and includes in its service territory the Chicago metropolitan area as well as smaller cities in central and southern Illinois and it internally monitors service quality performance in each of 12 geographic areas in Illinois, and a review of that data shows significant variation. In order for the Commission and the public to insure that all citizens of Illinois are receiving quality service, and that no geographic area or customer class is receiving unduly worse service than others, the GCI/City would have AI report on all of the performance measures for business and residential services separately, and for each of the twelve geographic areas of the state. These reports they claim, can validate or undermine customer complaints, and enable the Commission to act promptly when service quality problems arise for a particular area.

The GCI/City proposes that this information be available to the public at AI's website, and be submitted to the Commission in a form suitable for posting on the Commission's website to enable interested parties to obtain the information with minimal administrative burdens.

Staff's Position

Staff claims that it has been hindered in its review of the existing Alternative Regulation Plan because of the lack of adequate company information needed to perform its review of the Plan. Accordingly, Staff recommends that the Commission require that the Company maintain adequate records to enable a thorough five-year review of the Plan by Staff and the Intervenors in the future. In order to facilitate the monitoring of the Company's compliance with service quality requirements, Staff recommends that Ameritech be required to:

(1) continue its filing of monthly service quality standard and benchmark reports with the Commission;
(2) provide an annual service quality report to all consumers;
(3) notify customers of any rate that changes (increases or decreases) brought about through the operation of the Alternative Regulation Plan.

AI's Position

Ameritech Illinois opposes the GCI/City proposal for additional reporting requirements. GCI/City's proposal requires that each one of its proposed service quality measures be reported monthly, that each be reported separately for business and residence, that each be reported separately by each of 12 geographic areas in Illinois, and that each be reported separately for single versus multiple lines. According to AI, the data sought is currently maintained in a multitude of separate data bases and is not being reported on a regular basis, either internally or externally. Thus, AI claims the GCI proposal would create a significant administrative burden. In any event, should the Commission desire any information beyond what is currently being reported, it is free to request that information. The Company should not be required to report such extensive and detailed data simply on the possibility that it might at some later date be needed for analysis. We also believe that the data would be of little use to consumers, as it is far too technical and detailed.

Commission Analysis and Conclusion

We are not persuaded of any necessity for imposing the reporting requirement that the GCI/City suggest or in the manner they propose. We agree with Ameritech Illinois that GCI's proposal would be unduly burdensome and would provide more detailed information than either a consumer or the Commission would normally require. As Ameritech Illinois is well aware, the Commission can always request additional information it claims necessary. AI, however, will be required to company with Staff's reporting recommendations. And Staff should not wait to inform AI of any reports it might need or desire for future reviews.

2. Investment

AI's Position

The Company further opposes the GCI proposal to require a minimum investment of $29 per access line in the "cable and wire" account. At the outset, AI notes that the service metrics which are currently in place provide the best gauge of whether or not the Company's investment levels are appropriate. If it is able to meet the established repair and installation objectives, the investment levels are appropriate. Further, the use of a fixed investment per access line ignores changes in the costs of network construction and maintenance. Should new technologies be more cost effective than previous technologies, the Company argues, it would lose the incentive to utilize these lower cost, more efficient investment alternatives.

Ameritech Illinois also contends that Ms. TerKeurst failed to provide any independent analysis to support her $29 figure, except to note that it represents approximately the amount Ameritech Illinois spent in that account in 1996. The mere fact that Ameritech Illinois spent a certain amount in the past, it claims, proves nothing about what should be spent today or tomorrow. The Company claims that Ms. TerKeurst also failed to explain the particular focus on the "wire and cable" account. According to AI, It is only one of many accounts that would affect network performance, but Ms. TerKeurst has completely ignored the other relevant accounts.

Finally, the Company emphasized that it has substantially increased network expenditures on its own, without any regulatory requirement that it do so. Comparing 1999 spending levels with 2000 and 2001 (estimated budget) levels, both capital and expense spending have increased very significantly. Capital investments in Illinois have increased from $787 million in 1999, to $918 million in 2000, and $1.043 billion (estimated budget) in 2001. Similarly, expenses have increased from $495 million in 1999, to $664 million in 2000, and to more than $798 million (estimated budget, excluding network planning and engineering) in 2001. The increases include service quality improvements, as well as other network initiatives such as Project Pronto.

Commission Analysis and Conclusion

We reject GCI/City's proposal to have Ameritech Illinois invest at least $29 per access line annually, in the "Wire and Cable" account. The GCI/City has not established that this level of spending is reasonable or appropriate on a forward-looking basis. It simply reflects the amount which Ameritech Illinois spent in 1996. Nor has GCI established that the particular "Wire and Cable" account is any more relevant to service quality than any of the other Plant in Service accounts. Finally, a capital spending requirement is inconsistent with the nature of alternative regulation. The Commission has adopted service quality measures and benchmarks that will assure adequate service quality in the future. What is required to have Ameritech Illinois achieve the mandated level of service is a decision best left to the Company. It will either rise or fall on the basis of such decisions.

3. Service Quality- Wholesale

McLeod Position

McLeod's sole concern in this proceeding relates to the service quality measures that Ameritech is required to meet as a component of its alternative regulation plan. As a competitive local exchange company ("CLEC") which is dependant upon Ameritech for substantially all of the facilities and services it uses to provide services to retail customers, it has a strong interest in the quality of service that Ameritech provides, and in whether Ameritech meets the performance measurement standards that this Commission has established.

It is McLeodUSA's position that such measures should incorporate *wholesale* performance measures, and that such component of the plan would adopt the concept of "parity with a floor" in establishing Ameritech's service quality standards. McLeod's position is that the wholesale performance measures component of the plan should remain in effect as long as alternative regulation exists for Ameritech. Specifically, McLeod agrees with Staff's recommendation that the wholesale performance measures and remedy plan that are adopted in the Condition 30 proceeding (Docket 01-0120) should be incorporated into Ameritech's alternative regulation plan, and should continue in effect for the duration of the plan.

McLeod contends that improving Ameritech's retail service quality is necessary for the development of competition in the telecommunications marketplace in Illinois. Ameritech has consistently advocated that it only has to provide service to wholesale customers that is equal to the service provided to retail customers. Mcleod stated that Ameritech's retail service quality is so inadequate, however, that it gives Ameritech a competitive advantage. McLeod states that poor wholesale service, even at parity with Ameritech's retail performance, can harm a CLEC in at least four ways: (1) it often delays the CLEC's ability to recover its costs because the CLEC cannot bill a customer for services it does not deliver while waiting for Ameritech to install or repair its lines; (2) it imposes additional personnel costs on the CLEC such as costs expended on staffing needed to deal with angry customers, as well as staffing needed to work through the ILEC escalation process to resolve the service problem; (3) it exposes the CLEC to potential liability for harm to the CLEC's customer, posing a significant financial hardship to CLECs, such as McLeod who are already incurring large capital costs associated with competitive entry; and (4) it can seriously damage the CLEC's reputation which in turn can thwart a new competitor's ability to gain a foothold in local markets.

It is McLeod's position that the Commission should adopt the concept of "parity with a floor" in establishing standards of service quality that Ameritech should be required to meet for the provision of services and facilities to both its retail and its wholesale customers. McLeod explains that "parity with a floor" refers to two things. First, it means that Ameritech should provide wholesale service to its competitors, such as McLeodUSA, at a quality level no worse than the level Ameritech provides to its retail customers -- i.e. "parity." Second, it means that Ameritech must meet or exceed an objective standard of quality for all of its customers, both retail and wholesale -- i.e. the "floor." The "floor", McCloud explains is the measure of service quality below which Ameritech's services must not be allowed to fall.

McLeodUSA agrees with Staff's recommendation that ***wholesale*** performance measures should be included in any extension of alternative regulation for Ameritech, and that the wholesale performance measures component of the plan should remain in effect as long as alternative regulation is in effect for Ameritech.

To ensure the quality of Ameritech's wholesale services and to ensure compliance with Section 13-506.1 of the Illinois Public Utilities Act, McCloud would have all performance measurements and the Remedy Plan adopted pursuant to Condition 30 of our Merger Order in ICC Docket No. 98-0555 be incorporated into, and continue without interruption, throughout the life of the alternative regulation plan.

Staff's Position

Staff recommends wholesale performance measures be included in this proceeding so as to survive the three year time limit of Condition 30 in Docket 98-0555. While the issue of a remedy plan remains contentious, Staff contends that Condition 30 has been a successful collaborative venture between Ameritech Illinois, CLECs, and Staff. The problem, from Staff's perspective, is that Condition 30 might be in effect only through 2002. In Docket 98-0555, the Order states:

> Except where other termination dates are specifically established, all conditions set out below shall cease to be effective and shall no longer be binding in any respect three years after the Merger Closing Date. (Order, p. 237).

While there is other language in the merger Order that may arguably indicate that Condition 30 does not end three years after the Merger Closing Date, Staff believes the Commission has an opportunity in this proceeding to prevent any potential misunderstanding in the future.

Hence, Staff recommends that the Commission institute a wholesale service quality plan that would start in October 2002, clearly surviving the "three years after Merger Closing Date" limitation that may apply to Condition 30. The wholesale service quality plan Staff recommends would use the same business rules and remedy plans for key measurements as defined and modified by the Condition 30 collaborative effort and any resulting formal proceedings.

Staff believes the wholesale performance measure plan should remain in effect as long as Ameritech Illinois has an alternative regulation plan, and as long as it is necessary for this Commission to ascertain that Ameritech Illinois is no longer able to provide discriminatory service to CLECs. Staff also proposes that, for this extension of the Plan, the Commission accept the penalty cap that is adopted in Docket 01-0120, the formal proceeding addressing the remedy plan from the Condition 30 effort.

AI Response

Staff and McLeodUSA contend that the Commission should address wholesale service quality in this proceeding by ordering that the provisions of Merger Condition 30 survive as part of the Alternative Regulation Plan. In the alternative, McLeod state that such issues should be addressed "in the proceeding relating to Condition 30 of the order approving the SBC-Ameritech merger, Docket 01-0120, or another docket that is focused on this specific topic."

The Company urges the Commission to adopt McLeod's alternative proposal and should address wholesale issues in another, more appropriate forum. First, as McLeodUSA noted, Docket 01-0120 is already underway, with the express purpose of addressing Merger Condition 30. Second, Ameritech Illinois noted that wholesale service quality can be addressed in a variety of proceedings far more appropriate to that purpose, including the negotiation and arbitration process, rulemaking proceedings and others. Third, the record in this proceeding contains very little evidence concerning the measures, benchmarks, and remedies most appropriate for carriers.

Commission Analysis and Conclusion

~~We see no good reason to further expand the scope of this docket. The Commission will adopt McLeod's proposal that we address issues concerning wholesale service quality in Docket 01-0120. Issues concerning wholesale service quality can also be addressed in a wide variety of other proceedings, as Ameritech Illinois observed. The record in this proceeding is simply inadequate to address, in any meaningful way, the issues of wholesale service quality.~~

As we understand it, AT&T, McCloud and Staff desire to extend the timeline for the wholesale performance measures developed in response to Condition 30 of the Merger Order in Docket 98-0555. To effect this purpose, Staff proposes that the wholesale service quality measures and remedies adopted pursuant to Condition 30 be incorporated into the Ameritech Plan. In our view, however, the timeline issue, on which the proposal rests, simply does not exist.

Among other things, Condition 30 required SBC/Ameritech, the CLECs and Staff to engage in a collaborative process in order to develop and institute wholesale performance measurements and remedies. (Merger Order at 254) (Staff Ex. 8.0 at 15). A reading of the Condition 30 language shows that it has set time sequences for certain specific actions, e.g., collaboratives, reviews, reports and the like. No party has asserted that the timelines of Condition 30 have not been followed. To the contrary, McCloud states that the collaborative process under Condition 30 "has been successful in developing a set of parity-based performance measures." (McCloud Additional Brief on the Impacts of House Bill 2900 at 5).

The Proponents here base their proposal on the mistaken belief that Condition 30 (and the performance measures developed thereunder) will not survive the Merger

Order's "three year" limitation pronouncement. (Staff Brief on Exceptions at 18-21). The language in Docket 98-0555 which apparently causes their concern, states as follows:

> Except where other termination dates are specifically established, all conditions set out below shall cease to be effective and shall no longer be binding in any respect three years after the Merger closing date. (Merger Order at 237)(emphasis added)

By its very terms, however, the above-cited broad and general language does not override the specific provisions in Condition 30 which includes the following:

> For a minimum of one year following the Merger Closing Date, and thereafter on an as-needed basis as determined by Staff, participants in the collaborative process will collaborate to implement any additions, deletions, or changes to the performance measurements, standards/-benchmarks and remedies that are implemented by SBC/Ameritech in Illinois. (Order at 257; Condition 30)(emphasis added). .

If anything, this language makes clear that the viability of the performance measures continues forward with no limitation.

The assumption that the wholesale performance measures developed under Condition 30 might somehow expire within three years of the merger closing date, i.e., October 2002, (AT&T Ex. 1.0 at 10) is not supported either by the language of the Merger Order or common sense. If the three year limitation language of the Merger Order were to have any significance for Condition 30 (and we do not believe it does) it would only be to limit the time for the collaboratives and other procedural type matters – not for the substantive outcomes or ends developed through these processes. It is illogical to presume that the actual outcome of the collaboratives, i.e., the performance measures thereselves, would be subject to the timeline limitation of the Merger Order. This would wholly and completely defeat the purposes of Condition 30. Not even Ameritech, the party most likely to gain, has urged such an unreasonable construction.

There is further evidence showing that the wholesale performance measures survive Condition 30. According to McCloud, the development of an appropriate set of remedies for the wholesale performance measures is now the subject of the proceeding in Docket 01-0120. (McCloud Additional Brief on the Impacts of House Bill 2900 at 5) More to the point, the initiating Joint Petition (filed by AI, AT&T, and McCloud among others) for Docket 01-0120 expressly incorporates the performance measures. See, Joint Petition, Appendix A, (filed February 5, 2001) Docket 01-0120, Petition for

Resolution of Disputed Issues Pursuant to Condition (30) of the SBC/Ameritech Merger Order. Hence, it cannot be disputed that the performance measures "survive" in that they are expressly included and have been made part of the Docket 01-0120 proceeding.

Finally, newly enacted Section 13-712 (g) of the Act directs the Commission to establish and implement carrier to carrier wholesale service quality rules and establish remedies to ensure enforcement of the rules. On August 8, 2001, the Commission entered an order initiating a rulemaking proceeding pursuant to this statutory provision. See Docket 01-0539, Implementation of Section 13-712(g) of the Public Utilities Act.

To state, as the Proponents would have us do, that "the wholesale quality standards shall be incorporated into AI's alternative regulation plan " only confuses the issues and adds noting to the substantive provisions to be addressed and adopted in Docket 01-0120, or any other related proceeding. Each order the Commission enters is equally valid and enforceable in its own right and when possible, a single subject should be treated in a single order. For all these reasons, we reject the instant proposal of Staff, AT&T and McCloud.

VIII. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

(1) Illinois Bell Telephone Company d/b/a Ameritech Illinois ("Ameritech", "AI" or the "Company")is an Illinois corporation engaged in the business of providing telecommunications services to the public in the State of Illinois and, as such, is a telecommunications carrier within the meaning of Section 13-202 of the Illinois Public Utilities Act ("Act");

(2) the Commission has jurisdiction over the parties and the subject matter of this proceeding pursuant to the Illinois Public Utilities Act;

(3) the recitals of fact and conclusions of law reached in the prefatory portion of this Final Order are supported by the evidence in the record and the law and hereby adopted as findings of fact and law;

(4) Ameritech's petition for rate re-balancing in Docket 98-0335, is withdrawn;

(5) the CUB/AG complaint in Docket 00-0764, is denied;

(6) the findings of fact and conclusions of law set forth in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of facts and conclusions of law for purpose of this Order;

(7) the terms and conditions contained herein, to the extent they modify or conflict with the original terms and conditions as set forth in the Alternative Regulation Plan as approved in Docket 92-0448/93-0239, shall be controlling. In all other respects the Alternative Regulation Plan shall remain in full force and effect;

(8) the materials submitted by the parties in this proceeding on a propriety basis and for which propriety treatment was requested are hereby considered propriety and shall continue to be accorded proprietary treatment;

(9) any petition, objections, and motions in this docket that have not been specifically disposed of should be disposed of in a manner consistent with our conclusions herein.

IT IS FURTHER ORDERED that the terms and conditions contained herein, to the extent they modify or conflict with the original terms and conditions as set forth in the Alternative Regulation Plan as approved in Docket 92-0448/93-0239, shall be controlling. In all other respects the Alternative Regulation Plan shall remain in full force and effect.

IT IS FURTHER ORDERED that Ameritech's petition for rate re-balancing in Docket 98-0355,is withdrawn.

IT IS FURTHER ORDERED that the CUB/AG complaint in 00-0764 is denied.

IT IS FURTHER ORDERED that any objections, motions or petitions not previously disposed of are hereby disposed of consistent with the findings of this Order.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is not final; it is not subject to the Administrative Review law.

DATED:	October 4, 2001
BRIEFS ON EXCEPTION DUE:	October 18, 2001
REPLY ON EXCEPTION DUE:	2001

Eve Moran/Phillip Casey,
Administrative Law Judges